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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,095	11/20/2003	Brent David Franklin	AUS920030935US1	9423
35525	7590	08/31/2007		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER LIU, ERIC	
			ART UNIT 3628	PAPER NUMBER
			MAIL DATE 08/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/718,095	<b>Applicant(s)</b> FRANKLIN, BRENT DAVID	
	<b>Examiner</b> Eric Liou	<b>Art Unit</b> 3628	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-8 and 14-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-8 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. Applicant has amended claims 6-7, 14-16, and 18 and cancelled claims 1-5, 9-13, and 19-22. Thus, claims 6-8 and 14-18 remain pending and are presented for examination.

### ***Response to Arguments***

2. Applicant argues the ‘default menu’ of Elliott is only with respect to a given restaurant and thus is not interoperable between a multitude of different and unrelated restaurants. Grimes has been brought into the rejection to cover the added limitation. See art rejection below.
3. Applicant argues that there would have been no reason or desire for a person of ordinary skill in the art, when presented with the Elliot teachings, to somehow re-architect the entire Elliot system to provide a de-centralized system where customer food preferences are distributed to or maintained by each customer individually, due to the desire for having a conglomerate customer database with associated customer account information consolidated together under a central control. The Examiner notes, the limitation “a de-centralized system where customer food preferences are distributed to or maintained by each customer individually, due to the desire for having a conglomerate customer database with associated customer account information consolidated together under a central control” is not claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Claim Objections***

4. The Examiner acknowledges amended claim 14 and withdraws the previous objection.

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5. Claim 15 is objected to because of a minor informality. The phrase “a data processing system” in lines 13-14 should be changed to “the data processing system” because the data processing system is previously defined in lines 1-2 of the claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-8 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes, “Smart Cards Help Operators Build Better Customer Relations”, Nation’s Restaurant News, March 30, 1998, No. 13, Vol. 32, pg. 54 in view of Elliot, U.S. Patent No. 6,366,220.

8. **As per claims 6 and 15**, Grimes discloses a method and system for using dining preferences to generate an order, comprising:

physically presenting, by a customer, a smart card to an employee of a restaurant

(Grimes: paragraph 0012);

reading, by a data processing system, customer dining preferences for the restaurant from a memory in the smart card (Grimes: paragraphs 0002; 0012), wherein the memory includes dining preferences for food items for a set of different and unrelated restaurants (Grimes 0002; 0012; The Examiner notes, the phrase “provide restaurants with a host of customer preference data” suggests dining preferences for a plurality of restaurants including different and unrelated

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ones. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dining preferences of Grimes to have included dining preferences for a set of different and unrelated restaurants for the advantage of conveniently storing preferences for all restaurants that a user plans to visit on one card.), wherein the dining preferences (i) are customer- portable between the set of different and unrelated restaurants (Grimes: paragraph 0005), (ii) are read from the smart card (Grimes: paragraph 0012), and (iii) are stored in association with a restaurant name and a food item name also stored in the smart card (Grimes: paragraph 0012; The restaurant recognizes the food item name for the particular restaurant when the smart card is read by the reader.);

wherein the smart card further comprises a communications interface (Grimes: paragraphs 0002; 00012; The Examiner notes, it is inherent that the smart card has a communications interface that is used in connection with the reader.), wherein the communications interface allows for the dining preferences to be read from the memory by the data processing system at the restaurant for use in generating the food order (Grimes: paragraph 0012), wherein the communications interface reads the dining preferences for the restaurant from the smart card and writes the dining preferences for the restaurant to the smart card (Grimes: paragraphs 0002-0003; 0012).

9. Grimes does not disclose reading information from a card using radio frequency signals; a radio frequency transceiver that reads and writes information to the card; displaying, by the data processing system, the dining preferences for the restaurant on a display for order verification by both the employee and the customer, wherein other dining preferences maintained

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in the smart card for other restaurants are not displayed; generating, by the data processing system, the order using the dining preferences.

10. Elliot discloses reading information from a card using radio frequency signals (Elliot: col. 5, lines 24-27; a radio frequency transceiver that reads and writes information to the card (col. 5, lines 24-33; The Examiner notes, RF tag 104 receives and sends information.); displaying, by the data processing system, the dining preferences for the restaurant on a display for order verification by both the employee and the customer (Elliot: col. 8, lines 24-25; col. 9, lines 10-12), wherein other dining preferences maintained in the smart card for other restaurants are not displayed (Elliot: col. 8, lines 24-25; col. 9, lines 10-12); generating, by the data processing system, the order using the dining preferences (Elliot: col. 8, lines 35-45).

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system of Grimes to have included reading information from a card using radio frequency signals; a radio frequency transceiver that reads and writes information to the card as disclosed by Elliot for the advantage of transferring information from a card via a signal as opposed to physically swiping a card using a card reader.

12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system of Grimes to have included displaying, by the data processing system, the dining preferences for the restaurant on a display for order verification by both the employee and the customer, wherein other dining preferences maintained in the smart card for other restaurants are not displayed; generating, by the data processing system, the order using the dining preferences as disclosed by Elliot for the advantage of assuring a customer that an accurate order is being processed.

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13. **As per claim 7 and 18**, Grimes in view of Elliot discloses the method and system of claims 6 and 15 as described above. Grimes further discloses wherein the smart card further comprises a processor embedded within the smart card (Grimes: paragraph 0002).

14. **As per claims 8 and 17**, Grimes in view of Elliot discloses the method and system of claims 6 and 15 as described above. Grimes does not disclose initiating the generating step after a user input confirming the dining preferences for the order.

15. Elliot discloses initiating the generating step after a user input confirming the dining preferences for the order (Elliot: col. 8, lines 25-29; The Examiner interprets the customer choosing to order from the default menu to be confirming the dining preferences for the order.).

16. **As per claims 14 and 16**, Grimes in view of Elliot discloses the method and system of claims 6 and 15 as described above. Grimes further discloses wherein the dining preferences are generated by a terminal at the restaurant and stored in the smart card at the restaurant (Grimes: 0013; Information is updated and stored on the smart card during payment after the meal. Therefore, preference information is generated and stored on the smart card at the restaurant.).

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grimes, Rob, "It's Time to Take Network Computing Personally; Technological Times", Nation's Restaurant News, April 20, 1998, No. 16, Vol. 32, pg. 74.

Greer et al., U.S. Patent No., 5,969,316, drawn to a smart card for offline automated meal plans.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

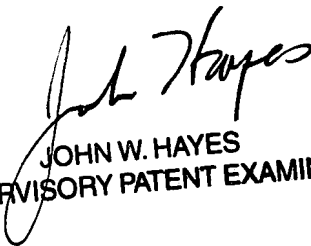
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Liou whose telephone number is 571-270-1359. The examiner can normally be reached on Monday - Friday, 8:00-5:00.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EL

  
JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER